

REMARKS

Claims 41, 43-45, 47, 52-54 are currently pending, wherein Claims 44 and 45 are withdrawn. The Examiner has provided several rejections as follows:

- I. Claims 41, 43, 47 and 52-54 are rejected under 35 U.S.C. § 112 ¶ 2 as allegedly being indefinite.
- II. Claims 41, 43, 47 and 52-54 are rejected under 35 U.S.C. § 112 ¶ 1 as allegedly failing to comply with the enablement requirement.

I. The Claims Are Not Indefinite

The Examiner states that:

Claim 41 is rejected ... as being incomplete for omitting essential elements ... “sample contains both a non-plus stranded RNA virus and a coronavirus” or at least a “sample suspected of containing a non-plus stranded RNA virus, while containing a coronavirus”.

Office Action pg 3. The Applicants disagree. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 41 to recite a Markush group clarifying that the sample is ‘suspected of’ comprising a “coronavirus” and/or “a not a plus-strand RNA virus”. The complementary language has been concomitantly deleted from the preamble. These amendments are made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

The Applicants respectfully request that the Examiner withdraw the present rejection.

II. The Claims Are Enabled

The Examiner states that:

... the specification does not provide a direct comparison of the replication of non-plus stranded RNA viruses to that of the replication of coronavirus in the presence of the same inhibitor ...

Office Action pg 5 [emphasis added]. The Applicants disagree and believe that the Examiner may have misinterpreted Claim 41. For example, the current scope of Claim 41 does not require that ‘non-plus stranded RNA viruses’ and a ‘coronavirus’ be in the presence of the same inhibitor. The Examiner is respectfully reminded that Claim 41 explicitly recites “at least one proteinase inhibitor”. Therefore, the Examiner’s argument that Claim 41 is drawn to a single proteinase inhibitor does not consider the broadest possible interpretation of the claim. Because the claim scope allows the presence of more than one proteinase inhibitor, the data presented within Example 10 and Table 5 of the Applicant’s specification fully enable this claim.

To reinforce this conclusion, the Applicants provide The Jollick Declaration presenting supportive data regarding this claimed embodiment. In contrast to the Examiner’s argument, it is clear that E64D does not inhibit the replication of the ‘not a plus-strand RNA viruses’, in concentrations similar to other tested protease inhibitors. *See, Jollick Declaration, ¶ 3, Exhibit A*. Further, E64D has been shown to be completely effective against coronaviruses replication in concentration ranges consistent with those shown in Figure 5 regarding the ‘not a plus-RNA strand’ viruses. *See, Jollick Declaration, ¶ 4, Exhibit B*.


Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 41 to clarify that the at least one proteinase inhibitor “is E64D”. Claim 54 is concomitantly canceled. These amendments are made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

The Examiner is respectfully requested to withdraw the rejection.

CONCLUSION

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 781-828-9870.

Dated: May 5, 2010


Thomas C. Howerton
Registration No. 48,650

MEDLEN & CARROLL, LLP
101 Howard Street, Suite 350
San Francisco, California 94105
781-828-9870